
(1998) 07 MAD CK 0016
In the Madras High Court
Case No : C.R.P. No. 2340/97

V. Siyam Sundar, rep. by Power Agent T.K. Ramasamy
Gounder

APPELLANT

Vs

T.N. Balasubraniam and T.N. Senthil Kumar

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1998) 07 MAD CK 0016

Hon'ble Judges : V. Kanakaraj, J

Bench : Single Bench

Advocate : A.K. Kumaraswamy, for the Appellant; T.S. Srinivasa Raghavan, for the Respondent

Judgement

V. Kanakaraj, J.—Heard the learned counsel for the petitioner and the respondents as well. The above Civil Revision Petition is directed

against the fair and decretal order dated 18.11.1996 made in I.A. No. 1496 of 1996 in O.S. No. 678 of 1994 by the Court of Principal District

Munsif, Bhavani dismissing the application filed u/s 151 of CPC seeking a direction from the Court for Police protection on ground that in spite of

an order of injunction having been passed as early as on 22.3.1995 in I.A. No. 72 of 1995 by the trial Court, the defendants in the suit were

disturbing the petitioner's physical possession and enjoyment of the suit properties. The learned counsel for the petitioner Mr. A.K.

Kumaraswamy, would contend that the plaintiff in the suit is the petitioner herein and the suit is one for permanent injunction restraining the

respondents/defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The suit properties are

landed properties. Since there had been some obstruction caused on the part of the defendants along with the suit I.A. No. 72 of 1995 had also

been filed by him and the said application got allowed after contest on 22.3.1995 and that the C.M.A. preferred by the defendants in C.M.A. No.

121 of 1995 in the Court of the District Judge, Erode had also been dismissed on 14.8.1995 and the revision filed in C.R.P. No. 2391 of 1995 by

the other side also got dismissed as early as on 25.1.1998 itself, that the injunction order is still in operation against the defendants. While so, the

defendants again started giving troubles to the petitioner's possession and enjoyment of the suit property, as a result of which the petitioner had to

file another application in I.A. No. 1496 of 1996 before the trial Court seeking a direction from the Court for Police protection to manage the

situation and the said application on enquiry having come to be dismissed by the trial Court, against the said order of dismissal the above revision

petition has been filed by the petitioner/plaintiff.

2. The learned counsel would further argue that based on three grounds; lower Court dismissed the application namely (i) that an application of this

nature should have been filed at the time of filing of the suit itself and the belated manner in which the petitioner filed the same did not reveal the

necessity, (ii) that the petitioner had failed to implead the Police as necessary party to the application; and (iii) that whether the injunction order

should be given effect to had to be decided in the suit ultimately.

3. The learned counsel would further urge that the proposition of law whether the civil Court has got power to issue direction to the Police had first

been taken up before the single Judge of this Court M. Srinivasan, J. (as he then was) would decide it answering the question in the negative and

that when the same point came up before yet another Court dealing with the same, Shanmukham, J. answered the question in the affirmative stating

thereby that the Civil Courts have got all powers to issue direction to the Police. In the above circumstances this question ultimately came to be

decided by the Division Bench of this Court in a decision reported in Sri-la-Sri Sivasubramanyananda Swami Vs. Sri-la-Sri Arunachalasamy

Chidambaram and Another, (Division Bench) wherein the Division Bench of this Court had approved the view of Shanmukham, J. confirming

thereby that the Civil Courts are having powers to issue direction to the Police

and that the Police concerned need not be impleaded as a party.

Laying emphasis on the above decision of the Division Bench, the learned counsel would pray for allowing this revision petition directing the lower

Court to issue a direction to the Police to give adequate Police protection to the petitioner implementing the injunction order effectively.

4. On the other hand, the learned counsel appearing for the respondents would admit the powers that are with the Civil Courts to issue such

directions but would continue to say that in the circumstances of the case since the order is in the nature of a restrictive injunction, such a direction

is unnecessary and straightaway the Police could give protection based on the very same order of injunction and on further ground that the

respondents are in physical possession and enjoyment of the property and hence the Police does not want to get entangled in such Civil matters as

a result of which, the petitioner had gone before the trial Court with the above application and the lower Court in turn coming to know that the

respondents are the cultivating tenants and the first respondent's name had also been entered in the Adangal register and that the name of the first

respondent had also been entered not only in Adangal but also in the register maintained by the Tahsildar under the Tamil Nadu Agricultural Land

Record of Tenancy Rights Act, 1969, had on enquiry, concluded that the first respondent is in occupation of the suit property in his capacity as the

tenant.

5. In the above circumstances, the Court below had arrived at the conclusion based on its own reasons to dismiss the application at that state

further contending that the rights of parties would be decided ultimately in the suit itself. It comes to be known that the suit is ripe for trial and the

Court below having already observed all the procedural paraphernalia and the suit is ripe for trial in the above circumstances this-Court is of the

strong view that it is paramount to ascertain as to in whose physical possession at present has to be ultimately decided in an elaborate manner by

allowing the parties to adduce sufficient oral and documentary evidence since the very suit itself is for permanent injunction based on possession by

the owner.

6. At the same time, the reasons assigned on the part of the lower Court that the petitioner did not come forward to prefer an application along

with the suit; that the petitioner failed to implead the Police as a necessary party and that the doubt cast by the Court below stating whether the

injunction order already granted by the very same Court had been still in force etc. The order made by it is herein found to be untenable and

inconsistent. The said order as passed-by the Court below does not also seem to be based on sound reasons and the same has to be set aside.

7. Hence it has become necessary on the part of this Court to give certain directions to the trial Court as given hereunder (i) the lower Court is

hereby directed to take up the suit in O.S. No. 678 of 1994 on priority basis and out of turn and expedite the trial procedure with the co-operation

of both the parties and to complete the trial and give an ultimate finding in the suit itself within 30th of October, 1998 and report compliance to this

Court; and (ii) the fair and decretal order passed by the Court of District Munsif, Bhavani in I.A. No. 1496 of 1996 in O.S. No. 678 of 1984

dated 18.11.1996 is hereby set aside and the application is restored to the file of D.M.C. Bhavani for the purpose of passing a fitting order on

merits and in accordance with law disposing of the same along with the suit. In result, the revision petition is disposed of on the above terms. No

costs.